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10 Attorneys for Defendant Pennsylvania Higher Education
11 Assistance Agency dba American Education Services

12 **UNITED STATES DISTRICT COURT**
13
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 JEFFREY A. NEEDELMAN,
16
17 Plaintiff,

18 vs.

19 PENNSYLVANIA HIGHER
20 EDUCATION ASSISTANCE
21 AUTHORITY dba AMERICAN
22 EDUCATION SERVICES, KEY
23 BANK, N.A.; & EDUCATION
24 CREDIT MANAGEMENT
25 SERVICES,

26 Defendants.

Case No. 08 CV 0442 L RBB

Honorable M. James Lorenz

**NOTICE OF MOTION AND MOTION
TO DISMISS [12(b)(6)] BY
DEFENDANT PENNSYLVANIA
HIGHER EDUCATION ASSISTANCE
AGENCY**

[Memorandum of Points and Authorities;
Request for Judicial Notice filed
concurrently herewith]

Date: June 30, 2008

Time: 10:30 a.m.

Place: Crtrm 14

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 30, 2008 at 10:30 a.m., or as
3 soon thereafter as the matter may be heard, defendant Pennsylvania Higher
4 Education Assistance Agency ("PHEAA")¹ will and hereby does move in
5 Courtroom 14 of the above-entitled court, located at 940 Front Street, San Diego,
6 California for an order dismissing Plaintiff's complaint and each cause of action
7 therein for failure to state a claim upon which relief can be granted, under Federal
8 Rules of Civil Procedure Rule 12(b)(6).

9 Dismissal pursuant to Federal Rule of Civil Procedure Rule 12(b)(6) is
10 proper where the claim is not based on a cognizable legal theory or where there are
11 insufficient facts alleged to support cognizable claim.

12 Plaintiff's First Cause of Action for Declaratory Relief seeks a declaration
13 that his student loans were discharged in a Chapter 13 bankruptcy proceeding.
14 Declaratory relief is only proper where it will resolve an actual controversy or
15 uncertainty. There is no uncertainty that his student loans have never been
16 discharged. There is no order discharging plaintiff's student loan debt and the
17 bankruptcy court's discharge order expressly excluded student loan debt. There are
18 no facts to support Plaintiff's claim for declaratory relief.

19 Plaintiff's Second Cause of Action for Reimbursement seeks reimbursement
20 of payments he has made on his student loans following the conclusion of his
21 Chapter 13 bankruptcy proceeding. Reimbursement is a claim for unjust
22 enrichment under a quasi-contractual theory, which is not proper where there is an
23 written contract that expresses the parties' obligations. Here, Plaintiff entered into
24 a written loan agreement, which defines the parties' obligations. Additionally,
25 Plaintiff's student loans were not discharged and he is obligated to make payments

26 ¹ Pennsylvania Higher Education Assistance Agency was erroneously sued as
27 Pennsylvania Higher Education Assistance Authority.
28

1 to PHEAA under the terms of the agreement. There are no facts to support
2 Plaintiff's claim for reimbursement.

3 This motion is based upon this Notice of Motion and Motion, the
4 Memorandum of Points and Authorities filed in support hereof, the Request of
5 Judicial Notice, and such other and further evidence and argument as may be
6 presented at the hearing on this motion.

7 DATED: April 21, 2008

PEPPER HAMILTON LLP

8 By: /s/

9 Michael L. Meeks

10 Carol A. Dwyer

11 Attorneys for Defendant Philadelphia
12 Higher Education Assistance
13 Agency
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